

REED SMITH SHAW & McCLAY

1200 18TH STREET, N.W.  
WASHINGTON, D.C. 20036-2506  
202-457-6100

FACSIMILE  
202-457-6113  
TELEX NO. 64711

WRITER'S DIRECT DIAL NUMBER

(202) 457-8654

RECEIVED

SEP 14 1994

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

PITTSBURGH, PA  
PHILADELPHIA, PA  
HARRISBURG, PA  
MCLEAN, VA  
PRINCETON, NJ

September 14, 1994

VIA HAND DELIVERY

William F. Caton, Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W., Room 222  
Washington, D.C. 20554

Re: In the Matter of Billed Party Preference for "0+"  
InterLATA Calls, CC Docket No. 92-77

Dear Mr. Caton:

Enclosed herewith for filing please find an original and ten (10) copies of the Reply Comments of the Intellicall Companies in the above-captioned proceeding. Please date-stamp the enclosed extra copy and return to the undersigned.

Thank you very much.

Very truly yours,

REED SMITH SHAW & McCLAY

By:

  
Enrico C. Soriano

Enclosure

cc: Attached Service List (with encl.)

No. of Copies rec'd  
List A B C D E

0710

DOCKET FILE COPY ORIGINAL RECEIVED

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C.

SEP 14 1994

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 ) CC Docket No. 92-77  
Billed Party Preference )  
for 0+ InterLATA Calls )

THE INTELICALL COMPANIES

Judith St. Ledger-Roty  
Enrico C. Soriano

REED SMITH SHAW & McCLAY  
1200 18th Street, N.W.  
Washington, D.C. 20036  
(202) 457-6100

Their Attorneys

September 14, 1994

## **SUMMARY**

The record demonstrates that the Commission's reliance on Billed Party Preference is misplaced.

- Contrary to the Commission's professed objective of increasing competition in the OSP market, the record contains ample evidence that BPP would deprive OSPs without a substantial 1+ customer base of the opportunity to continue to compete for 0+ traffic. These anticompetitive effects would extend to consumers who are currently benefitting from the ability to instantaneously choose a service and carrier to handle their operator-assisted calls. Under BPP, the consumers' ability to take advantage of new products and services would be curtailed because consumers would be tied to a primary provider.
- The costs of BPP, all of which would be expended to singularly support BPP, exceed any real or perceived benefits.
- There has been no demonstration that the consumers are averse to using access codes, nor is there any indication that consumers are currently being restricted from reaching their carrier of choice. Consumers are aggressively exercising their opportunity to select their carriers through access code dialing.

- Inmate phones are unique and must necessarily be exempt from BPP. Confinement facilities have special requirements which cannot be addressed by BPP. Specialized inmate CPEs are better suited to address each of these requirements.
- Billed Party Preference is a concept whose time has long passed, rendered archaic by the competitive forces and the current regulatory environment. It is time the Commission and the proponents recognize this and abandon BPP altogether.
- To address rate abuses, the Commission can and should impose rate caps. This is a simple, immediate, and comparatively very inexpensive solution.

## TABLE OF CONTENTS

I.	THE RECORD DEMONSTRATES THAT IMPLEMENTATION OF BILLED PARTY PREFERENCE IS NOT IN THE PUBLIC INTEREST .....	2
A.	The Overwhelming Number Of Commenters, Representing Virtually All Segments Of The Industry, Oppose BPP. ....	2
1.	The facts demonstrate that BPP is anticompetitive, and anti-consumer. ....	4
2.	Rate caps, TOCSIA, and the Commission's current regulations readily provide the proximate benefits of BPP. ....	5
3.	The costs of BPP, all of which would be expended to support only BPP, are far in excess of any real or perceived benefits. ....	10
4.	BPP would have an adverse impact upon the OSP, payphone, and specialized CPE markets. ....	12
B.	There Are Reasonable Alternatives Which Are Better Suited To Address Any Remaining Market Imperfections. ....	16
II.	INMATE PHONES ARE UNIQUE, AND MUST BE EXEMPT FROM BPP UNDER ANY CIRCUMSTANCES. ....	17
	CONCLUSION .....	21

SEP 14 1994

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of                   )  
                                       )      CC Docket No. 92-77  
Billed Party Preference          )  
for 0+ InterLATA Calls          )

Intellicall, Inc. and Intellicall Operator Services, Inc. (collectively, the "Intellicall Companies"), through their attorneys, hereby offer their Reply Comments on the further Notice of Proposed Rulemaking ("Notice") in the above-captioned proceeding.

On August 1, 1994, in response to the Commission's Notice, the Intellicall Companies filed their Comments opposing the implementation of Billed Party Preference ("BPP").<sup>1</sup> Specifically, the Intellicall Companies suggested that the Commission adopt rate caps or zones of reasonableness for Operator Service Provider ("OSP") rates in order to address remaining problems which may exist in the competitive operator services marketplace.<sup>2</sup> Rate caps, or the establishment of zones of reasonableness, could be adopted and implemented now, not years and numerous federal and state regulatory proceedings from now, thus ensuring that consumers are not charged more for operator-assisted calls than

<sup>1</sup> See Comments of Intellicall Companies (Aug. 1, 1994).

2     Id. at 5.

the Commission considered within some zone of reasonableness. In the Intellicall Companies' view, the significant costs of BPP far outweighed its purported benefits, particularly in light of the Commission's statutory power, exercisable now, to cap OSP rates to curb the alleged abuses perpetrated by errant providers.<sup>3</sup>

The Intellicall Companies believed then, and believe now, that the problems which BPP is intended to cure have been, in large measure, addressed by a combination of the Commission's existing regulations and the restraints imposed by the competitive marketplace. To the extent to which problems remain, the Intellicall Companies believe that direct rate regulation, pursuant to the Commission's authority under the Communications Act, would be a far better mechanism than the very costly BPP.

I. THE RECORD DEMONSTRATES THAT IMPLEMENTATION OF BILLED PARTY PREFERENCE IS NOT IN THE PUBLIC INTEREST

A. The Overwhelming Number Of Commenters, Representing Virtually All Segments Of The Industry, Oppose BPP.

Roughly five years after Bell Atlantic's original petition was filed,<sup>4</sup> most of its avid proponents, including Bell Atlantic, have abandoned BPP. It is now clear, as evidenced by the many comments filed in this proceeding, that the industry's consensus

---

<sup>3</sup> Id. at 5, 13.

<sup>4</sup> See Bell Atlantic Petition for Rulemaking to Establish Uniform Dialing Plan from Pay Telephones, RM-6723, April 13, 1989.

has crystallized in strong opposition to BPP.<sup>5</sup> It is even clearer that the very few remaining proponents who continue to support BPP do so for their own strategic gains, not out of some benevolent concern for the public interest.

If there is any lingering doubt that support for BPP has all but disappeared, the Commission and the proponents need only look at the comments filed in this proceeding.<sup>6</sup> Those who oppose BPP implementation demonstrate, inter alia, that the costs of BPP outweigh the purported benefits (and in any event the benefits are already being realized), that BPP will stifle operator services competition, that BPP will result in inferior service to the public, and that there are less costly alternatives to achieving

---

<sup>5</sup> The Intellicall Companies reviewed in excess of fifty comments and ex parte filings. Of these, only six were in support of BPP. See Comments of MessagePhone, Inc.; Comments of Pacific Bell and Nevada Bell; Comments of Ameritech Operating Companies; Comments of Sprint Corporation; Comments of MCI Telecommunications Corporation; Comments of GTE Service Corporation.

<sup>6</sup> See, e.g., Comments of United States Telephone Association; Comments of BellSouth Telecommunications, Inc.; Comments of Value-Added Communications, Inc.; Comments of National Tele-Sav, Inc.; Comments of Pacific Bell and Nevada Bell; Comments of American Public Communications Association; Comments of New York Telephone Company and New England Telephone and Telegraph Company; Comments of Anchorage Telephone Utility; Comments of Organization for the Protection and Advancement of Small Telephone Companies; Comments of Competitive Telecommunications Association; Comments of Oncor Communications; Comments of Gateway Technologies, Inc.; Comments of U.S. Intelco Networks, Inc.; Comments of U.S.. Long Distance, Inc.; Comments of South Carolina Department of Corrections; Comments of Operator Service Company; Comments of Ameritel Pay Phones, Inc.; Comments of North Carolina Payphone Association; Comments of Pay Tel Communications, Inc.; Comments of Iowa Network Services, Inc.; Comments of MFS Communications, Inc.; Comments of Teleport Communications Group, Inc.; Comments of Rochester Telephone Corporation.



the Commission's stated goals than the massive reconfiguration of the operator services networks. As discussed below, these arguments are compelling and should eliminate further discussion of this anti-consumer, anticompetitive proposal.

1. The facts demonstrate that BPP is anticompetitive, and anti-consumer.

Contrary to the FCC's intent to increase competition in the OSP market, the record contains ample evidence that BPP would deprive OSPs without a substantial 1+ base of the opportunity to continue to compete for 0+ traffic.<sup>7</sup> Its anticompetitive effects, however, would not be limited to competitors, but spread to consumers who today are in large measure reaping the benefits of a number of niche, highly competitive services within the overall market. The fact is that BPP, rather than assuring consumer choice, will stifle it.

Today, for example, consumers can choose, instantly, to use MCI's 1-800 COLLECT service. They don't have to be presubscribed to MCI. A consumer can choose, instantly, AT&T's 1-800-CALL ATT; they don't have to be presubscribed to AT&T. These choices can and are being made based on the specific promotions of the carriers. In a competitive market, unencumbered by BPP, these types of innovative services will continue to evolve, giving

---

<sup>7</sup> See, e.g., Comments of Cleartel Communications, Inc., at 5; Comments of Conquest Operator Services Corp., at 3; Comments of Iowa Network Services, Inc., at 23; Comments of National Tele-Sav, Inc., at 5; Comments of CompTel, at 14.

consumers a choice, by call type (e.g., collect) and type of desired service, every time he or she places a call.

Under BPP, the consumers' ability to take advantage of new products and services is effectively curtailed because the consumers would be tied to a primary provider. A consumer would have to change PICs every time he or she wanted to take advantage of new services, or promotions, and of course requiring consumers to change PICs every time he or she wants to try a new service is not feasible. As a proximate result, carriers would not offer innovative services because the likelihood of those services being tried by prospective customers would be nil.

2. Rate caps, TOCSIA, and the Commission's current regulations readily provide the proximate benefits of BPP.

Many of those who oppose BPP, including the Intellicall Companies, suggest that rate caps, the Telephone Operator Consumer Services Improvement Act of 1990 ("TOCSIA"),<sup>8</sup> and the Commission's rules implementing TOCSIA's statutory mandate,<sup>9</sup> will assure any anticipated benefits of BPP.<sup>10</sup> Indeed, it is the Intellicall Companies' belief that the Commission should not mandate that hundreds of millions of dollars, if not billions, be spent to

---

<sup>8</sup> See 47 C.F.R. § 64 (1992), adopted pursuant to Pub. L. No. 101-435, 104 Stat. 986 (1990), codified at 47 U.S.C. §226.

<sup>9</sup> See, e.g., Policies and Rules Concerning Operator Service Providers, Report and Order, CC Docket No. 90-313, 6 FCC Rcd 2744 (1991).

<sup>10</sup> See, e.g., Comments of AT&T; Comments of the Intellicall Companies; Comments of American Council on Education.

solve a perceived problem, e.g., excessive rates charged by some OSPs, that is readily addressed in the current environment.

To the extent that the Commission believes one or more OSPs' rates are unreasonable, the Intellicall Companies believe that the FCC should institute a hearing challenging the reasonableness of those rates, or alternatively, establish a cap on OSP rates generally. The vast percentage of the legitimate OSP industry concurs with this position. Continued rate gouging benefits no one.

Consumers are harmed because the perpetrators believe they can continue this conduct, albeit only for a short while longer.<sup>11</sup> Legitimate OPSs are harmed because consumers shy away from 0+ dialing if the presubscribed carrier doesn't already have a positive nationwide reputation, thus making it harder for companies like the Intellicall Companies to obtain and retain customers. Even those in favor of BPP do not dispute the Commission's jurisdiction to impose rate caps. Sprint, for example, argues that the FCC could exempt the prison market from BPP, but implement rate caps to assure the reasonableness of rates in this admittedly specialized market.<sup>12</sup>

Nonetheless, the Commission endorses the concept of BPP, concluding that it would eliminate the need for access code

---

<sup>11</sup> OSPs charging higher rates than reasonable have a very limited window of opportunity. The record already reflects the prevalence of dial-around traffic, and the conduct of bad actors, coupled with attractive opportunities offered by national IXCs marketing 1-800 services will assure the continued proliferation of dial-around calling.

<sup>12</sup> Comments of Sprint, at 41.

dialing and guarantee routing to the billed party's preferred carrier. However, there has been no demonstration that the consumers are, in fact, averse to using access codes. The Notice itself is devoid of support for the proposition that access code dialing is detrimental, relying on self-serving statements of some BPP proponents who themselves offered no factual support for this proposition.<sup>13</sup>

In apparent recognition of the weakness of the Commission's conclusion that access code dialing is contrary to the public interest, Sprint attempts, without success, to bolster the Commission's factual predicate. Sprint claims, for example, that the competitive IXC's (non-AT&T) increase in market share post-divestiture, and hence post equal access, is "empirical evidence of the public's aversion to using access code dialing to complete their calls."<sup>14</sup> The increase in competitive IXCs market share post divestiture proves nothing of the sort. Sprint neglects to remind the Commission that facilities-based interexchange competition was relatively new in 1984, and that the IXCs, Sprint included, were laboring under huge competitive disadvantages related not just to access code dialing but to post dial delay, interconnection quality generally, and the like. Attributing the increases in market share to the elimination in access code dialing is simply wrong. Furthermore, there may be a difference

---

<sup>13</sup> See FNPRM, at 7.

<sup>14</sup> See Comments of Sprint, at 9.

in a consumer's willingness to dial access codes from home, or business, and a consumer's willingness to dial access codes while in transit.

There can be no better evidence that consumers are in fact willing to dial access codes for operator services than MCI's and AT&T's wildly successful launch of 800 services. This success also belies the summary conclusions contained in the Burke Marketing Research report ("Burke Report"), from which Sprint extrapolates that consumers are unwilling to dial a few additional digits to reach a specific OSP. The market evidence, including the successes of AT&T's and MCI's recent promotions, suggests that consumers are willing to dial additional digits to reach a specific carrier. Given that, one can only surmise that Sprint hasn't marketed its 10XXX and 1-800 services innovatively, or to the degree these services are marketed by AT&T and MCI, or that consumers don't care to reach Sprint. Neither surmise, however, is relevant to consumer's general willingness to use access codes.<sup>15</sup>

Guaranteed routing to the consumers carrier of choice -- another purported benefit of BPP -- is available today. Indeed, unrestricted access to one's preferred carrier is the prevailing law. Subsequent to the Commission's unblocking order, consumers in transient locations are now able to dial their preferred

---

<sup>15</sup> Even assuming, arguendo, that some consumers may be averse to dialing access codes, it is not clear from the record, empirically or otherwise, that these same consumers would be willing to pay extra in return for an arguably marginal convenience in the BPP environment.

carrier, without any restrictions, through "dial-around" calling. Oncor's and Teleport's respective experiences, among others, are powerful proof that consumers have become adept at reaching their preferred carrier through dial-around mechanisms (if they need or want to). Teleport, for instance, indicates that it has noticed a "steady and systematic decrease in the use of direct dialed calls [from transient payphones] and a countervailing increase in dial around calls."<sup>16</sup> Similarly, Oncor claims that subsequent to the implementation of the Commission's unblocking order, dial-around calling has "reduced Oncor's traffic from aggregator telephones presubscribed to it by up to fifty percent."<sup>17</sup>

Sprint makes much of the Commission's lack of resources to police the OSP industry to assure they are, in fact, complying with the TOCSIA. Yet the resources the Commission would need to enforce TOCSIA pale in comparison to the resources that will be needed to implement BPP. All the Commission has to do is exercise its forfeiture powers in earnest, once, against any payphone providers who block access codes, and any continued access code blocking will cease. All the Commission has to do is institute one hearing (e.g., Notice to Show Cause Why Rates Aren't Unlawful), in earnest, against a carrier charging excessive rates, and those in the industry charging excessive rates will lower them, not wanting to face similar consequences. This the Commission could do tomorrow. It does not need to wait the years

---

<sup>16</sup> See Comments of Teleport Communications Group, Inc., at 3-4.

<sup>17</sup> See Comments of Oncor Communications, Inc., at 5.

before BPP can be implemented to assure that consumers will not pay excessive operator service rates.

3. The costs of BPP, all of which would be expended to support only BPP, are far in excess of any real or perceived benefits.

In conceptually endorsing BPP in light of its costs, the Commission clearly hoped that BPP costs and functionally could be spread over a large array of new features and services.<sup>18</sup> The record, however, demonstrates that BPP research and development, and implementation costs will be of no benefit to other prospective services. Carrier after carrier reported to the Commission that they had no ability to utilize the features and functions of BPP for any other services, either now or in the foreseeable future.<sup>19</sup> As Nynex, Bell South Telecommunications, Inc., Cincinnati Bell Telephone, GTE, and Ameritech, among others, make clear, there is no conceivable use or application for OSS7 other than BPP.<sup>20</sup> Thus, recovery of all OSS7 costs would come from the BPP service.

Thus, the Commission must conduct its cost benefit analysis, based solely on any perceived benefits to those few consumers it

---

<sup>18</sup> See, e.g., FNPRM, at 12.

<sup>19</sup> See, e.g., Comments of Nynex, at 8; Comments of BellSouth, at 12; Comments of Cincinnati Bell, at 3; Comments of Ameritech, at 9; Comments of GTE, at 12.

<sup>20</sup> Sprint and GTE, cognizant of the costs of OSS7, suggest that the deployment of OSS7 signaling in all end offices is not necessary. See Comments of Sprint, at 39; Comments of GTE, at 12. Many commenters disagree.

perceives do not have access to, or do not exercise their ability to access their carrier of choice.<sup>21</sup> Given the fact that there is no other anticipated use of OSS7, combined with the millions of dollars necessary to deploy it, it is painfully clear that BPP would be a very costly undertaking.

Furthermore, the record demonstrates that the actual costs of implementing BPP would exceed the original projections by hundreds of millions of dollars.<sup>22</sup> For instance, the original cost projections do not reflect the LEC overhead cost loading of 25%, advertising/marketing costs, balloting expenses, the costs associated with fourteen-digit LIDB screening, SS7 to OSS7 conversion costs, and the list goes on.<sup>23</sup>

Moreover, the economic costs resulting from the restructuring of the OSP and specialized CPE markets, and the attendant displacement of these service providers (and naturally their employees),<sup>24</sup> necessarily must be factored into the cost

---

<sup>21</sup> Recall that the choice of carrier exists today. It will not exist under BPP, except to the degree a consumer is willing to change PICs every time they want to sample a new service offering. See supra pp. 4-5.

<sup>22</sup> Although the Intellicall Companies have no empirical data of their own upon which to base their financial projections, it is the Intellicall Companies' belief that the implementation costs of BPP, combined with the negative economic impact resulting from the displacement of existing service providers (e.g., third-tier OSPs and specialized CPE providers), would be prohibitive.

<sup>23</sup> See also Comments of AT&T, at 3; Comments of Polar Communications Corp. and Digital Technologies, Inc., at 1; Comments of New York Telephone Company and New England Telephone and Telegraph Company, at 18.

<sup>24</sup> See also Comments of National Tele-Sav, Inc., at 5  
Continued on following page



projections. When these costs are viewed in light of the marginal benefits, if any, that BPP would provide, there is little doubt that the implementation of BPP would be a tragic mistake.<sup>25</sup> In any event, the public-at-large, and the telephone consumers in particular (the purported recipients of the many "benefits" of BPP), would end up paying dearly.

4. BPP would have an adverse impact upon the OSP, payphone, and specialized CPE markets.

While the proponents of BPP have been swift to conclude that BPP would be beneficial to the consumers and the competitive market, little thoughtful discussion, if any, has been given to the serious negative impact BPP would have on very important industry sectors. BPP would dramatically harm the ability of payphone providers and small OSPs to stay in business.

The proposition that BPP would, in the long run, foster competition in the payphone and OSP marketplace by eliminating

---

Continued from previous page

(elimination of incentives for call aggregators to enter into presubscription agreements with OSPs would drive many companies out of business); Comments of Competitive Telecommunications Association, at 2; Comments of Cleartel Communications and Call America, at 2; Comments of American Network Exchange, Inc., at 5 (BPP would result in hundreds of millions of dollars of stranded investments).

<sup>25</sup> Although Ameritech and Sprint claim that BPP would result in lower prices to consumers, a review of their respective comments reveals that their claim is based upon a limited calculation of the overall BPP costs. See Comments of Ameritech, at 4-5, 10; Comments of Sprint, at 22. For example, none of the proponents calculated the costs associated with the loss of competition, and hence loss of innovative, new services, etc.

commission payments, is fallacious at best.<sup>26</sup> The system of commission payments to owners of customer-owned coin-operated telephones ("COCOTs") has been a critical part of the competitive payphone industry.<sup>27</sup> Owners of payphones rely on commission payments from OSPs to defray the costs of providing their service, the OSPs, in return, pay these commissions in order to have an opportunity to serve their customers.<sup>28</sup> By eliminating the incentive for OSPs to enter into presubscription agreements with payphone providers (as commission payments by OSPs to payphone providers will become extinct under BPP), many payphone providers would be driven out of business. Similarly, by eliminating the opportunity to serve customers at transient locations, OSPs would no longer have a viable source of income which, consequently, would drive them out of business.<sup>29</sup>

---

26 The Commission's analysis is based, in part, on the assumption that commission payments are inherently anticompetitive. To the contrary, as the Intellicall Companies have indicated in their Comments, commissions representing the purchase of shelf-space have served a two-pronged purpose. They have permitted an OSP the opportunity to efficiently offer its services from transient locations, and they have also permitted pay telephone owners of other phones serving the transient public to recover their costs of making the phones and the environment which supports the phones, available in the first instance. See The Intellicall Companies Comments, at 22.

27 Even before payphone competition, the LECs paid some location owners for the right to place profitable phones on their premises. These payments will have to continue to be made to location owners, who otherwise might find it more profitable to have a soda machine in place of a payphone.

28 See Intellicall Comments, at 22-23.

29 The comments of National Tele-Sav, Inc. are instructive:

Indeed, the jobs of approximately 35 people

BPP would effectively render useless the thousands of smart phones offering operator services within the phone itself. All 0+ calls would have to be routed to the LECs, making the built-in intelligence totally redundant and unnecessary.<sup>30</sup> Under BPP, this specialized CPE market would disappear as there would be no need for this capability.

Intellicall and other similarly situated providers would also lose the ability to offer messaging services from payphones. Now payphones, coupled with auxiliary equipment, can offer consumers the opportunity to leave a message for the called party, which the service provides would attempt to deliver in a prearranged time increments, e.g., every 15 minutes. Consumers can access this service with the push of one digit.

If BPP goes into effect however, the service would not be easy to access. The consumer would need, not only to push a digit, but also redial, for the second time, its billing mechanism, and wait for the service provider to validate the

---

Continued from previous page  
employed by NTI likely will disappear. . . .  
Implementation of BPP would undermine the  
long-term viability of [the] competitive  
OSP market, irreparably harm the larger  
telecommunications industry by depriving  
it of many emerging and innovative  
carriers, and injure the nation's  
economy.

Comments of National Tele-Sav, Inc., at 5.

<sup>30</sup> See Comments of CompTel, at 2, 19; Comments of Cleartel, at 2; Comments of American Network Exchange, at 5.

billing mechanism before he or she could leave the message. Consumer convenience would be effectively thwarted.

It is obvious that those who favor BPP are not concerned about consumer choice, nor public convenience. Rather, virtually every proponent of BPP seeks to dramatically increase their existing market share in operator services by regulating that market.<sup>31</sup>

Sprint's Comments are particularly telling in this regard. Sprint argues that AT&T's unfair competitive advantage flows in large part from customers AT&T inherited at divestiture,<sup>32</sup> thus implicitly claiming that the extensive balloting procedures were not enough to stimulate users to exercise their option to select a different carrier.<sup>33</sup> Yet Sprint is more than willing to use this complacency on the part of consumers to its own anticompetitive advantage. In the BPP context, for example, Sprint urges the Commission to forego balloting altogether, claiming that balloting would confuse the consumers.<sup>34</sup>

---

<sup>31</sup> See, e.g., Comments of MessagePhone, Inc. (recommending the use of MessagePhone's trunk side architecture instead of upgrading the LECs' OSSs).

<sup>32</sup> See Comments of Sprint, at 22.

<sup>33</sup> Some commenters posit that BPP would have the opposite effect of fostering competition. According to them, BPP would create a bottleneck in the local service market controlled by the largest LECs. See, e.g., Comments of MFS, at 4, 9; Comments of Iowa Network Services, Inc., at 24.

<sup>34</sup> Comments of Sprint, at 44.

B. There Are Reasonable Alternatives Which Are Better Suited To Address Any Remaining Market Imperfections.

There are alternatives to BPP which are more efficient and cost-effective. The Intellicall Companies have suggested, as have many other commenters, that the Commission should address market imperfections by capping the rates charged by OSPs.<sup>35</sup> Indeed, the Commission has the authority to implement an industry-wide benchmark against which OSP rates may be judged.<sup>36</sup> Rate caps would benefit the consumers and the OSP marketplace immediately, not years from now. The Intellicall Companies continue to believe that, given the costs, length, and uncertainties of implementing BPP, it is incumbent upon the Commission to exercise its power to cap the OSP rates now.

One other suggestion merits discussion. Although the dominant carriers have been generally successful in educating the consumers, it is conceivable that some consumers do not fully appreciate the benefits that can be derived from using access codes. The solution, with trivial expense compared to BPP, would be for OSPs to continue to educate the consumers and increase their awareness.<sup>37</sup>

---

<sup>35</sup> See, e.g., Comments of APPC at iv; Comments of CompTel at 39; Comments of the Intellicall Companies at 5-6.

<sup>36</sup> See, e.g., Section 226(h)(2) of TOCSIA, 47 U.S.C. § 226(h)(2). See also Section 205 of the Communications Act, 47 U.S.C. § 205(a).

<sup>37</sup> See, e.g., Comments of Rochester Telephone Corporation.

II. INMATE PHONES ARE UNIQUE, AND MUST BE EXEMPT FROM BPP UNDER ANY CIRCUMSTANCES.

Even the most ardent supporters of BPP recognize that the unique requirements of the confinement facilities marketplace make application of BPP there infeasible. Sprint, for example, states that because of special confinement facilities requirements, it does not oppose exempting them from BPP so long as the FCC imposes a rate cap to assure that reasonable rates are charged.<sup>38</sup> Ameritech similarly recognizes that inmate services should be exempt, so long as the rates charged are equal to or less than the dominant carrier rate.<sup>39</sup>

Exemption of confinement facilities for BPP is the only reasonable thing to do, if BPP is implemented. Confinement facilities do have unique requirements stemming from the very nature of the institutions. For example, prison administrators must have the ability to limit the length of calls, to control and restrict the numbers which are dialed by inmates so that judges, law enforcement officials, ex-husbands or wives, and the like, do not receive unwanted calls, and to limit access to only collect calls, so that fraudulent calls charged to other people's calling cards or credit cards are not made. The list of special requirements goes on and on. True administrators simply must have the ability to balance the inmates' needs for communications

---

<sup>38</sup> Comment of Sprint, at 41.

<sup>39</sup> See Comments of Ameritech, at 11, 12.

service against the institutions' need to regulate access to telephone services.<sup>40</sup> BPP would totally eliminate this control.<sup>41</sup>

Over the years, due in large measure to a recognition of the prison market's unique requirements, state and federal regulators have accorded the prison market special status. In 1991, for instance, the Commission appropriately concluded that inmate-only calling services should be exempt from the unblocking requirements of the Telephone Operator Consumer Services Information Act of 1990.<sup>42</sup> Similarly, many state regulators have properly provided exemptions for correctional institutions on the basis of their unique requirements.<sup>43</sup>

---

<sup>40</sup> See Comments of South Carolina Office of Information Resources, at 8.

<sup>41</sup> Historically, inmate calling resulted in harassment, fraud, high uncollectibles, and necessitated prison administration intervention. When it became clear that prisons posed unique requirements, and thus were underserved at best, a number of entrepreneurial firms, including the Intellicall Companies, set about to address this special market. For example, before competition, only three county jails in North Carolina had inmate phones installed in cell blocks by the local telephone companies. See Comments of North Carolina Payphone Association, Inc. at 2. Now, 78 out of 90 county jails have inmate phones furnished free-of-charge. See id. Competition has since grown, resulting in improved products and services. Consequently, with the advent of many providers entering the marketplace, the LECs and IXC's have begun to reconsider their philosophy regarding correctional facilities and are now pursuing the same market they had once ignored. See In Re Providers of Institutional Telecommunications Services, Docket No. 3922-U, at 4.

<sup>42</sup> See Policies and Rules Concerning Operator Service Providers, Report and Order, 6 FCC rcd. 2744, 2752 (1991). The Commission reasoned that correctional institutions present "an exceptional set of circumstances that warrants their exclusion from [TOCSIA] regulation." Id.

<sup>43</sup> See, e.g., In Re Providers of Institutional Telecommunication  
Continued on following page

The BPP proposal reflects neither an understanding of the inmate market's competitive evolution, nor an appreciation for the unique requirements of the institutional telephone market. For example, one of the purported benefits of BPP is that it would eliminate the confusion associated with access code dialing. In the prison environment, specialized inmate phones do not permit "dial-around" calling in conformity with TOCSIA. Hence, since the use of access codes is effectively precluded, and appropriately so, there is no dialing confusion to alleviate.

In the BPP environment, "smart phones," such as the ones now used in correctional institutions, would be effectively abolished. The network, not the CPE, would have control of the call, and thus there would be no unique functions for the CPE to perform. This would result in hundreds of millions of dollars in stranded investment.<sup>44</sup>

---

Continued from previous page

Service, Docket No. 3922-U, Georgia Public Service Commission; In the Matter of a Commission Investigation into the Use of "Store and Forward" Technology in Telephone Equipment Operated in Minnesota, Docket No. P-999/C-91-22, Minnesota Public Utilities Commission (July 9, 1992).

<sup>44</sup> See, e.g., Comments of CompTel at 2, 19; Comments of ClearTel at 2; Comments of AmNex at 5; Comments of Value-Added Communications, Inc. at 6. BPP would eliminate an entire segment of the telephone industry. Basic economic theory suggests that market participants whose products and/or services are no longer useful to the target consumers will not survive in the marketplace. Years and millions of dollars spent on research and development, sales, and marketing, would disappear in one fell swoop. Perhaps even more significant than these losses would be the loss of trust in the competitive market by entrepreneurial firms. Who would invest in new and improved technology when the government could render it effectively obsolete in an instant?



Under BPP, once the call is placed, fraud control becomes the responsibility of the carrier transmitting the call. The proponents suggest that a network-based fraud control,<sup>45</sup> not an individual premise-based mechanism, is better suited to address the problem of fraud in inmate facilities. This misses the mark. The reason why a network-based solution is inadequate in a prison environment is that effective call control depends largely upon the interaction between the provider and the correctional facility. This interaction is impossible to achieve in a network-based environment.

Furthermore, under the current system, inmate telephone providers provide CPE free-of-charge in return for a presubscription arrangement with the inmate facilities. Under BPP, these providers would lose their incentive to provide equipment at no cost because they would no longer be able to serve as the presubscribed carrier. This would shift the burden of purchasing and/or maintaining the necessary CPEs on prison administrators, and eventually the taxpayers. If these institutions could not afford these investments, the only communications link between the prisoners and their families would be severed as well.<sup>46</sup>

---

<sup>45</sup> See, e.g., MCI ex parte, November 24, 1993.

<sup>46</sup> For instance, the South Carolina Department of Corrections indicates that the State of South Carolina is not likely to provide funds to furnish inmates with telephones, noting that it would cost in excess of \$1 million to provide basic inmate phone service.